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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
	)	
Review of the Commission's Regulations	)	
Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations	)	
Review of Policy and Rules	)	MM Docket No. 87-7

RESPONSE TO INITIAL REGULATORY FLEXIBILITY ANALYSIS

Media Access Project, the Center for Media Education, the Minority Media and Telecommunications Council, the United Church of Christ, Office of Communication (MAP *et al.*), respectfully submit the following comments to the Commission's Initial Regulatory Flexibility Analysis (IRFA), which appears as Appendix A to the Commission's *Second Further Notice of Proposed Rulemaking*, FCC No. 96-438 (released November 7, 1996) (*Second FNOPR*) in the above referenced docket. The IRFA, *inter alia*, requests comment on the effect of various proposed changes of the Commission's multiple ownership rules on "small businesses."

INTRODUCTION

MAP, *et al.*'s principal objection to the Commission's IRFA is in the agency's misleading, and result-oriented characterization of certain radio and television stations as "small businesses." In its desire to demonstrate to the Small Business Administration (SBA) and Congress that dilution of certain ownership rules will benefit "small businesses," the Commission attempts to classify as many radio and television broadcasters as possible in that category.

More importantly, the skewed analysis that the Commission undertakes will result in harm to the very entities that are intended to benefit from the Small Business Act and the Contract with

America Advancement Act, *i.e., **genuinely*** small businesses. These businesses tend to be disproportionately owned by minorities, females and new entrants. The barriers to entry that would be created by relaxing the station ownership rules would not only be detrimental to these businesses, but to the critical goals of viewpoint diversity and competition that create a healthy entrepreneurial culture.

THE COMMISSION'S CLASSIFICATION OF THE VAST MAJORITY OF TV AND RADIO STATIONS AS "SMALL BUSINESSES" IS FLAWED

The Commission calculates that, as of 1996, approximately 1194 of 1550, or 77% of television stations are small businesses under the SBA's definition, which includes television stations that have no more than $10.5 million in annual receipts. *Second FNOPR* at 46. The Commission similarly calculates that 11,605 of 12,088 or 96% of radio stations are small businesses based on SBA's definition, which includes those radio stations with no more than $5 million of revenue. *Id.*

But these numbers are ridiculously flawed. The Commission admits, without embarrassment, that "[t]hese estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies." *Second FNOPR* at 46. Nor does the Commission take into consideration licensees with 10, 20, 30 or more broadcast stations, or those licensees that have entered into Local Marketing Agreements (LMAs). Instead the Commission looks at the revenues of each station, individually, to determine whether it qualifies as a small business.[1]

[1]Indeed, unlike the Census Bureau, the Commission considers AM/FM stations (many of which use the same facilities and much of the same staff) as two separate stations! Therefore, although the Commission has allowed these combinations to "permit station owners to take advantage of... economies of scale...," *Second FNOPR* at 49, the Commission refuses to view

The absurdity of this reasoning is apparent. Under the Commission's rubric, any individual News Corp. owned and operated station that has revenues of under $10 million would be considered a "small business," despite the fact that News Corp. *inter alia*, owns 22 stations that reach nearly 35% of American TV households, numerous newspapers and magazines throughout the world and satellite networks in several countries. Similarly, any Jacor radio station in Denver that might gross under $5 million would be considered a small business, despite the fact that Jacor owns ***seven*** other stations in the same ***market***, as well as 114 others throughout the country. Indeed, individual broadcast properties of Fortune 500 members General Electric (revenues of $70 billion), Walt Disney ($12 billion), Viacom ($11.7 billion), Westinghouse ($9.6 billion), Gannett ($4 billion) and Tribune ($2.8 billion) might also be defined as "small businesses" under the Commission's scheme.

ANY DILUTION IN THE COMMISSION'S CURRENT OWNERSHIP RULES WILL HARM ACTUAL "SMALL BUSINESSES."

It is patently obvious that the Commission's proposed changes to the ownership rules in the *Second FNOPR* will harm those broadcasters that can be *accurately* characterized as small businesses.[2] As set out in greater detail in MAP *et al.*'s comments to the *Second FNOPR*, relaxation of the Commission's multiple and cross ownership rules will harm small broadcasters in numerous ways. First, it will put small broadcasters at a competitive disadvantage with larger stations that can offer advertisers lower rates and/or greater exposure. Second, it will drive up

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them as one entity for the purposes of the IRFA.

[2]The January, 1997, National Association of Broadcasters' TV Board's vote to support substantial relaxation of the ownership restrictions is indicative of this viewpoint. The 13-9 vote was almost entirely split according to the size of the broadcasters voting, with large group owners favoring relaxation of the ownership rules.

the cost of stations, eliminating the ability of small broadcasters (and especially female and minority broadcasters and potential new entrants) to purchase stations. The harm to minority and female owners is particularly compelling. According to the Commission, as of 1995, just 3% of television stations were owned by minorities (compared to 27.8% representation in the population as a whole).[3] *Second FNOPR* at 47. As of 1987, just 1.9% of television stations and 3.8% of radio stations were owned by women (compared to 51% representation in the population as a whole). *Id.*

In addition, to the extent that the SBA is concerned with small businesses other than broadcasters, small ***advertisers*** will be disadvantaged if a broadcaster owns several broadcast stations in a market. Under this scenario, a broadcaster can drive up advertising rates as a condition of access to those stations. For instance, in the example described above, Jacor has control over approximately more than half of the total advertising dollars spent on radio in Denver. Mark Landler, "Jacor To Buy Citicasters in $770 Million Radio Station Deal," *New York Times*, February 14, 1996.

Despite the clear implications of the Commission's proposed changes, the agency continues its charade by stating that it "seeks to minimize the impact of any changes in the television local ownership rules upon small entities while preserving competition and diversity in our local markets." *Second FNOPR* at 48. This sets up a false dichotomy - the implication is that any changes to the multiple ownership rules that help "small businesses" may also harm competition and diversity in local markets. If one includes industry behemoths such as Westinghouse, General

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[3]According to the U.S. Population Calculation issued by the Bureau of the Census, December 1, 1996, out of a total U.S. population of 26,842,000 minorities represented the following: Blacks, 12.7%, Hispanics, 10.6%, Asians, 3.65%, and Native Americans, 0.8%.

Electric, Clear Channel and Sinclair Broadcasting in the definition of "small business," the Commission is correct. But under any acceptable definition of "small business," any loosening of the ownership rules will not only harm these business, it will also have a profoundly negative effect on competition and diversity on a local level.

CONCLUSION

The Commission's IRFA grossly overstates the extent to which "small businesses" would benefit from relaxation of the ownership rules. The Commission should undertake a comprehensive study to determine how many broadcasters are indeed "small." Only then can it make a genuine analysis of the effect of any changes in its rules on these entities.

Respectfully submitted,

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